

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

09/18/2001

CLERK OF THE COURT  
FORM L000

HONORABLE MICHAEL D. JONES

M. Cearfoss  
Deputy

LC 2001-000038

FILED: \_\_\_\_\_

STATE OF ARIZONA

THOMAS S ZIA

v.

JEFFERY STEVEN VALENTIN

TAYLOR W FOX

EAST TEMPE JUSTICE COURT  
REMAND DESK CR-CCC  
THE HONORABLE JOHN R ORE  
JUSTICE OF THE PEACE  
EAST TEMPE JUSTICE COURT  
1845 E BROADWAY STE 8  
TEMPE AZ 85282

RULING

EAST TEMPE JUSTICE COURT

Cit. No. 76023

Charge: A. DUI - IMPAIRED TO THE SLIGHTEST DEGREE  
B. DUI - DRUGS

DOB: 08-18-1978

DOC: 03-05-2000

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This Court has jurisdiction of this appeal pursuant to the Arizona Constitution, Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement and the Court has considered and reviewed the record of the proceedings from the East Tempe Justice Court and the memoranda submitted.

This Court notes that Appellant has filed several motions in this case: a Motion to Strike (Appellee's Motion for Enlargement of Time) and a Motion for Default. The Court notes that no copies of those motions were submitted to the assigned court. Good cause not appearing in those motions,

IT IS ORDERED denying both of them.

Appellant has filed numerous pleading directly with this Court even though he is represented by counsel. Appellant is not entitled to hybrid representation; that is, to have an attorney representing him and to file pleadings on his own behalf and represent himself at the same time.

IT IS THEREFORE ORDERED striking all pleadings filed by Appellant. This Court will not accept any pleadings filed by Appellant *pro se*. Appellant has two choices:

- (1) he may waive the right to counsel and represent himself, or
- (2) he will allow court-appointed counsel to represent him. In the event that Appellant does not expressly and explicitly waive his right to counsel, then this Court will presume that court-appointed counsel shall speak for Appellant.

In this case Appellant was cited for violation of Driving While Under the Influence of Intoxicating Liquor, a Class 1 Misdemeanor, in violation of A.R.S. Section 28-1381(A)(1) and

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Driving with Alcohol or Drugs, a Class 1 Misdemeanor, in violation of A.R.S. 28-1381(A)(3). Appellant was also charged with several other civil traffic violations which are not contested or at issue in this case. At the time of his first pretrial conference, Appellant requested monies from the East Tempe Justice Court to hire his own attorney. The Court denied the motion and the record reflects that Appellant was informed of his options: (1) hire an attorney; (2) waive his right to counsel and represent himself; or (3) court-appointed counsel would be provided from the Public Defender's Office. Appellant refused to make any choice. The trial judge appointed a court-appointed attorney to represent Appellant. The trial judge also, apparently, permitted Appellant to file *pro se* motions even though he was represented by counsel. The record does not reflect any waiver of counsel. The matter proceeded to a trial by jury and Appellant was convicted on August 11, 2000. Sentencing was continued many times and reset to December 21, 2000. Between the time of trial and sentencing, Appellant attempted to file a Notice of Appeal which the clerk of the East Tempe Justice Court refused to accept as untimely (untimely because Appellant had not had sentence imposed). Appellant brought a Special Action to the Superior Court in CV 2000-016812. This Court can only presume that the assigned Superior Court judge was not made aware of the fact that Appellant had not been sentenced. In CV 2000-016812 the Court accepted jurisdiction of the Special Action and ordered that the Tempe justice court accept the Notice of Appeal. This court further ordered that the appeal process proceed in the Tempe Justice Court. The East Tempe Justice Court then submitted this matter to the Superior Court along with the record.

The Superior Court Rules of Appellate Procedure - Criminal provide in Rule 4(A):

The Notice of Appeal shall be filed with the trial court within ten (10) days after the entry of judgment and sentence, except that a Notice of Delayed Appeal shall be filed

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within ten (10) days after entry of an order  
granting a delayed appeal (emphasis added).

Thus, the law is quite clear that the time for filing an appeal is after entry of judgment and sentence, not before. The Notice of Appeal filed by Appellant was premature.

IT IS THEREFORE ORDERED remanding this matter back to the East Tempe Justice Court for sentencing and entry of judgment of guilt.